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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of: : Docket No.: 6674-0037-1
SYLVIE GAUTHIER et al. : Date: September 16, 2008
Serial No.: 10/762,103 : Examiner: T. Tran
Filing Date: January 20, 2004 : Art Unit: 1711
Title: LEATHER DECORATIVE LAMINATE

Commissioner of Patents

P.O. Box 1450

Alexandria, VA 22313-1450

APPELLANT'S BRIEF TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

PURSUANT TO 37 C.F.R. §§1.191 and 41.37

Dear Sirs:

This brief is in furtherance of the Notice of Appeal, which was filed on June 16, 2008. The time for filing an Appeal Brief expired on August 16, 2008. A one-month extension is respectfully requested with the filing of this Appeal Brief.

1. STATEMENT OF THE REAL PARTY IN INTEREST:

The real party of interest is Panolam Industries International, Inc. of Shelton, Connecticut, U.S.A., currently the assignee of record for the present application.

2. STATEMENT OF RELATED CASES:

U.S. Application Serial No. 10/762,104 (the " '104 Application") is currently pending and is assigned to the real party of interest in the present application, Panolam Industries International, Inc. Claims 1, 3-6, and 22-33 of the present case are rejected under the judicially

created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4-7, and 9 of the '104 Application. A Notice of Appeal has been filed in the '104 Application.

3. JURISDICTIONAL STATEMENT:

The Board has jurisdiction under 35 U.S.C. 134(a). The Examiner mailed a final rejection on December 14, 2007, having a period of response set to expire on March 14, 2008. A Response and Amendment pursuant to 37 C.F.R. §1.116, and Notice of Appeal were filed on June 16, 2008 (June 14, 2008 was a Saturday), with a request for a three month extension to the response period. The time for filing an Appeal Brief expired on August 16, 2008, to which a one-month extension has been respectfully requested with the filing of this appeal.

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In re Kahn, 441 F.3d 977, 985 (Fed. Cir. 2006)

KSR International, Inc., v. Teleflex, Inc., 127 S.Ct. 1727 (2007)

6. [Reserved]

7. STATUS OF AMENDMENTS:

An amendment after final rejection was filed on June 16, 2008. The Advisory Action of June 30, 2008 indicates that the amendment was entered.

8. GROUND OF REJECTION TO BE REVIEWED:

a) Whether claims 1-2 are obvious over U.S. Patent No. 2,721,817 (hereinafter "Hastings").

b) Whether claims 1-2, 4-6, and 24-25 are obvious over U.S. Patent No. 3,698,978 ("McQuade") in view of Hastings.

c) Whether claims 1-2 and 4-6 are rejected obvious over U.S. Patent No. 3,700,537 ("Scher") in view of Hastings.

d) Whether claims 3, 7 and 22-32 are obvious over McQuade or Scher in view of Hastings and further in view of U.S. Patent No. 2,732,325 ("Lindenfeiser") or U.S. Patent No. 3,589,974 ("Albrinck").

e) Whether claims 34-38 are obvious over McQuade or Scher in view Hastings, and further in view of U.S. Patent No. 4,132,821 ("Hiers").

f.) Whether claims 1-2 and 4-6 are obvious over McQuade, Scher, and Hastings, and further in view of Hiers.

g) Whether claims 1-7, 22-32, and 34-38 are obvious over U.S. Patent No. 6,432,167 ("Palmer") in view Hastings.

It is respectfully noted that claims 1, 3-6, and 22-33 are rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2, 4-7 and 9 of U.S. Patent application no. 10/762,104, and claims 1-7 and 22-39 are rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent no. 7,179,538 alone, or in view of U.S. Patent No.

2,732,325 (hereinafter “Lindenfeiser”), U.S. Patent 3,589,974 (hereinafter “Albrinck”), U.S. Patent 4,132,821 (hereinafter “Hiers”). Appellants do not challenge these rejections in the present appeal, and understand that they are held in abeyance until such time as the claims ‘104 application are allowed.

9. STATEMENT OF FACTS:

a) Regarding the rejection of claims 1-2 under 35 U.S.C. §103(a) as being unpatentable over Hastings, the following facts are respectfully submitted:

1. Hastings discloses the problems associated with application of colored patterns to a pliable sheet material, which problems include: “tendency of colored patterns so applied to work free of the surface as the pliable material is used” and pliable material surface irregularities having a “surface which resists the uniform application of color”. (Col. 1, lines 24-39)

2. Hastings discloses an operation for applying color to a pliable material 10 that includes: applying a suitable colored adhesive 14 to one surface of a support material 12 (col. 2, lines 25-28), placing the adhesive covered support material 12 in a stack, which stack consists of the support material 12, a stencil 11, and a sheet of pliable material 10, in that order, and applying sufficient pressure to the stack to force the adhesive through openings in the stencil 11 and into contact with the pliable material 10. (Col. 2, lines 48-58). The support sheet 12 and the stencil 11 are then stripped from the pliable material 10. (Col. 2, lines 58-72). The resulting product is a pliable material with a pattern of adhesive attached to one surface. (Col. 2, lines 66-68)

b) Regarding the rejection of claims 1-2, 4-6, and 24-25 as being unpatentable over McQuade in view of Hastings, the following facts are respectfully submitted:

1. McQuade discloses a process for the production of decorative textured and sculptured laminates. (Col. 1, lines 13-14)

2. McQuade discloses that “[w]ith the rising cost of natural products, such as wood and leather, it has become even more desirable to provide irregularly surfaced high pressure laminates which simulate these natural products.” (Col. 1, lines 50-53)

3. McQuade discloses that it is an object to provide “a unitary high pressure laminate having registered, different patterned areas, in a simple and inexpensive manner.” (Col. 2, lines 8-11)

4. McQuade discloses a high pressure laminate having a print sheet provided “with a suitable decorative print on its upper surface, in the illustrated embodiment, such printing being in the form of a leather-like coloring.” (Col. 2, lines 44-46)

c) Regarding the rejection of claims 1-2 and 4-6 as being unpatentable over Scher in view of Hastings, the following facts are respectfully submitted:

1. Scher discloses a high pressure laminate having an embossed and/or debossed surface and a method for making the same. (Col. 1, lines 24-27)

2. Scher discloses that it is desirable to produce a high pressure laminate having “shallow depressioned textured surfaces to relatively deeply sculptured three dimensional surfaces which simulate wood grain, leather, slate, etc.” (Col. 2, lines 19-22)

3. Scher discloses that it is an object “to produce decorative high pressure laminates having deeply embossed surfaces, in a simplified and inexpensive manner.” (Col. 3, lines 63-65)

4. Scher discloses that “the assembly provided to produce a laminate in accordance with the present invention comprises, from the bottom upwardly,... a plurality of conventional phenolic impregnated core sheets 14, a conventional melamine impregnated print sheet 16 to provide a decorative background, a suitable embedment sheet 18..., [and] a conventional melamine resin impregnated overlay sheet 20”. (Col. 5, lines 1-14)

5. Scher discloses that the “print sheet 16 is preferably impregnated with a dye of suitable color, or it may be overprinted with a suitable color and/or design.” (Col. 5, lines 21-23)

d) Regarding the rejection of claims 34-38 as being unpatentable over McQuade or Scher in view Hastings, and further in view of Hiers, the following facts are respectfully submitted:

1. Hiers discloses that “natural leather presents technical difficulties in manufacture, economic difficulties in marketing, and durability problems in use”. (Col. 1, lines 6-12)

2. Hiers discloses that it is an object “to provide an artificial leather which has strength, durability, appearance, temper, smooth surface...”. (Col. 2, lines 45-47)

3. Hiers discloses a needled textile substrate that is composed of a network of entangled fibers 2 that may be compacted using heat and pressure, and that may include a skin coat layer 20. (Col. 10, lines 38-65) The substrate may include an inert filler placed in the substrate to improve the hand and feel of the resulting artificial leather. (Col. 8, lines 58-60)

e) Regarding the rejection of claims 1-7, 22-32, and 34-38 as being unpatentable over Palmer in view Hastings, the following facts are respectfully submitted:

1. Palmer discloses a method for forming a glossy decorative laminate. (Col. 2, lines 56-57)

2. Palmer discloses that decorative laminates may have textured surfaces that range from having relatively shallow depressions to relatively deeply sculpted or embossed surfaces having a noticeable three-dimensional effect, such as, wood grain, leather, slate, etc. (Col. 2, lines 29-36)

3. Palmer discloses that the decorative laminate may be any of the many resin based decorative laminates known to those of ordinary skill in the art, which laminate includes a decorative sheet 14 composed of a pattern layer 22. (Col. 4, lines 8-18)

10. ARGUMENT:

a) Claims 1-2 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hastings.

Claims 1 and 2 stand or fall together under this rejection.

The rejection provides that Hastings discloses a laminate comprising a sheet of leather 10 and a composite layer having a support layer 12 and an adhesive layer 14. Appellants respectfully disagree with the characterization of Hastings and the rejection based thereon.

Claim 1 of the present application recites a heat and pressure consolidated laminate, that comprises in superimposed relationship: a) a core layer containing at least one cellulosic sheet impregnated with a thermosetting resin; and b) a first decorative layer consisting essentially of leather. Claim 2 recites that the thermosetting resin is a phenol-formaldehyde resin.

Hastings provides a flexible sheet material having a decorative design thereon. According to Hastings, the problem to be overcome is that irregularities on the surface of a material such as suede leather “resist the uniform application of color”. (col.1, lines 38-39) To overcome that problem, Hastings teaches that adhesives may be applied to a support material. The adhesive coated support material 12 is placed on top of a stencil 11, which is placed on top of a pliable material 10. Pressure is applied to the support material. As a result, adhesive is forced through openings in the stencil, and such adhesive is affixed to the surface of the pliable material. The support material and the stencil are removed, “leaving a colored design on a background corresponding to the original color of the material 10.” (col.2, lines 67-71). The end product is a pliable material with a pattern of adhesive affixed to a surface.

Clearly, the colored sheet material disclosed by Hastings is not a heat and pressure consolidated laminate, one that includes a core layer containing at least one cellulosic sheet impregnated with a thermosetting resin, and a first decorative layer consisting essentially of leather, as is recited in claims 1 and 2. The layers referred to within the rejection as being a part of the laminate, are not part of a product at all. Rather, they are materials used within a method of applying a decorative design to a substrate. Both the support layer and the stencil are removed after the adhesive is applied to the surface of the pliable material. The end product taught by Hastings is a pliable material with a pattern of adhesive affixed to the surface – which is not a heat and pressure consolidated laminate as is recited in present claims 1 and 2.

Appellants respectfully submit further that the aforesaid laminate is also not obvious in view of the disclosure of Hastings. The rejection provides that it would be obvious to make “integral of separate parts” and thereby arrive at the claimed laminate from the disclosure of Hastings. Appellants respectfully disagree. “Most inventions arise from a combination of old elements and each element may often be found in the prior art. However, mere identification in the prior art of each element is insufficient to defeat the patentability of the combined subject matter as a whole.” *In re Kahn*, 441 F.3d 977, 985 (Fed. Cir. 2006)

Appellants acknowledge the Supreme Court’s opinion in *KSR International, Inc., v. Teleflex, Inc.*, 127 S.Ct. 1727 (2007):

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. (*KSR* at 1740.)

Such is not the case here, however. Hastings teaches a solution to the problem of printing on a pliable material having an irregular surface. The solution involves applying adhesive to a substrate, and pressing that adhesive through a stencil so that a design of the adhesive may be affixed to the outer surface of the pliable material. The end product is not a predictable variation of the heat and pressure consolidated laminate recited in claims 1 and 2. In fact, it is not a heat and pressure consolidated laminate at all. The core layer of the presently claimed laminate provides the laminate with structural integrity. It is the core layer material (e.g., at least one cellulosic sheet) impregnated with resin, which is cured by the application of heat and pressure, that provides the structural integrity. There is no such structure within the printed pliable material of Hastings. Consequently, a fair reading of the prior art illustrates well that the claimed laminate is not a predictable variation of the printed pliable material of Hastings.

In addition, the present application clearly discloses the problems associated with adhering leather to a substrate using an adhesive; e.g. the user was often required to

stretch the leather skin to fit the panel, it was often necessary to attach the edges of the skin to the panel's underside prior to attaching the panel to a substrate, shrinkage in some instances would cause the skin to pull away from the underside of the panel, become detached from the substrate, or tear, etc. The claimed laminate, on the other hand, solved these problems by having a leather decorative layer as an integral part of the decorative laminate; e.g., no need to fit and/or adhere the skin to the panel or substrate. Other advantages of the present invention laminate include: 1) it is not dimensionally limited by the size of a natural leather skin; 2) it can be made in a wide variety of colors and textures; 3) it is a ready-to-use end product having a desirable leather surface; and 4) it retains the smell of natural leather. These advantages are not disclosed or suggested by the proposed combination of references. Hence, the recited laminate is not predictable in view thereof.

In light of the foregoing, it is respectfully submitted that the rejection of claims 1 and 2 is not valid and it is respectfully requested that the rejection be reversed and claims 1 and 2 be allowed.

b) Claims 1, 2, 4-6, 24, and 25 are rejected under 35 U.S.C. §103(a) as being unpatentable over McQuade in view of Hastings.

Claims 1, 2, and 4-6 stand or fall together and should be considered independent of claims 24 and 25. Claims 24 and 25, which depend from independent claim 7, stand or fall together under this rejection.

The rejection provides that McQuade discloses a high pressure laminate comprising core sheets, a decorative print sheet, and overlay sheets, but does not disclose a decorative sheet to be "essentially leather". The rejection provides further that Hastings provides a decorative laminate, and that it would have been obvious to one of ordinary skill in the art to have used leather, as taught by Hastings, in the decorative layer of McQuade because simulated and natural leathers have been used as alternatives in the prior art. Appellants respectfully disagree with the characterization of McQuade and Hastings and the rejection based thereon.

A description of claim 1 is provided above. Claim 7 of the present application recites a heat and pressure consolidated laminate, that comprises in superimposed relationship: a) a core layer containing at least one cellulosic sheet impregnated with a thermosetting phenol-formaldehyde resin, said cellulosic sheet having a resin content ranging from about 25 percent to about 35 percent; b) a first decorative layer consisting essentially of a bonded leather having a sheet thickness ranging from about 0.2 mm to about 4.0 mm; and c) an overlay layer disposed on a side of said first decorative layer opposite the core layer, said overlay layer being at least one sheet of alpha cellulose paper impregnated with a melamine formaldehyde resin.

Appellants direct the Board to the remarks above regarding Hastings, which, as is detailed above, discloses a pliable material with a printed design disposed thereon, and does not disclose a decorative laminate – including a heat and pressure consolidated laminate.

McQuade, on the other hand, discloses a laminate including a print sheet comprising a cellulosic sheet and a pattern that provides an appearance that simulates leather. (See Col. 2, lines 43-46; Col. 3, lines 20-28) This print sheet is not a leather material, as is recited in claims 1 and 7. Nor is it a “simulated” leather material in that it does not feel or smell like real leather. There is, in fact, no teaching whatsoever within McQuade of a leather being used in a laminate. On the contrary, McQuade teaches away from using leather and suggests that a high pressure laminate that simulates leather may be used as an alternative to leather: “With the rising cost of natural products, such as wood and leather, it has become even more desirable to provide irregularly surfaced high pressure laminates which simulate these natural products.” (See Col. 1, lines 50-53)

As indicated above, claim 7 recites a heat and pressure consolidated laminate that comprises, inter alia, a core layer containing at least one cellulosic sheet impregnated with a thermosetting phenol-formaldehyde resin, said cellulosic sheet having a resin content ranging from about 25 percent to about 35 percent. The rejection provides Hastings discloses an adhesive layer that comprises phenol-formaldehyde resin. Hastings discloses that the adhesive may include a mixture of substantially equal parts of butadiene acrylonitrile and phenol formaldehyde resin. There is no disclosure within Hastings of a

cellulosic sheet having a phenol formaldehyde resin content ranging from about 25 percent to about 35 percent.

Consequently, it is clear that: 1) McQuade and Hastings disclose completely different products (e.g., a laminate vs. a substrate to be printed on); 2) McQuade does not disclose using leather within a laminate; 3) the teachings of McQuade directly contradict the hindsight suggestion that natural leather may be used as an alternative to a print sheet disposed within a laminate; 4) there is no disclosure within Hastings of a cellulosic sheet having a phenol formaldehyde resin content ranging from about 25 percent to about 35 percent; and 5) the laminate presently claimed in claims 1 and/or 7 is not a predictable variation of either McQuade or Hastings alone, or in combination.

In light of the foregoing, it is respectfully submitted that the rejection of claims 1-2, 4-6 and 24-25 is not valid and it is respectfully requested that the rejection be reversed and the claims 1-2, 4-6, and 24-25 be allowed.

c) Claims 1, 2 and 4-6 are rejected under 35 U.S.C. §103(a) as being unpatentable over Scher in view of Hastings.

Claims 1, 2, and 4-6 stand or fall together under this rejection.

The rejection provides that Scher discloses a laminate comprising core sheets, a decorative print sheet, and overlay sheets. According to the rejection, the print sheet is with decorative printing, and is simulated leather. The rejection provides further that Hastings provides a decorative laminate, and that it would have been obvious to one of ordinary skill in the art to have used leather, as taught by Hastings, in the decorative layer of Scher because simulated and natural leathers have been used as alternatives in the prior art. Appellants respectfully disagree with the characterization of Scher and Hastings and the rejection based thereon.

Hastings, as is detailed above, discloses a pliable material with a printed design disposed thereon, and does not disclose a decorative laminate – including a heat and pressure consolidated laminate.

Scher discloses that it is desirable to produce a high pressure laminate with deeply embossed surfaces that *duplicates* natural products such as slate, leather and wood. (Col. 2, lines

47-49; emphasis added). According to Scher, it is an object of the invention to provide a high pressure laminate that having deeply embossed surfaces, in a simplified and inexpensive manner. (Col. 3, lines 63-65) Scher discloses that “the assembly provided to produce a laminate in accordance with the present invention comprises, from the bottom upwardly,... a plurality of conventional phenolic impregnated core sheets 14, a conventional melamine impregnated print sheet 16 to provide a decorative background, a suitable embedment sheet 18..., [and] a conventional melamine resin impregnated overlay sheet 20”. (Col. 5, lines 1-14) Scher further discloses that the “print sheet 16 is preferably impregnated with a dye of suitable color, or it may be overprinted with a suitable color and/or design.” (Col. 5, lines 21-23)

Hence, Scher teaches that it is desirable to produce an inexpensive, high pressure laminate that duplicates, but does not use, a natural product such as leather. There is no disclosure or suggestion within Scher that a high pressure laminate could be made less expensively by substituting a natural material such as leather in place of a cellulosic print sheet made to look like leather. On the contrary, Scher goes to great lengths to disclose embossing techniques operable to create a laminate that looks like, but is less expensive than, a laminate with a leather decorative layer. (e.g., See Col. 1, lines 24-27; Col. 3, lines 62-68) In addition, Scher discloses an advantage of providing a laminate that looks like, but does not contain, actual leather is the enhanced durability and scuff resistance provided by the high pressure laminate with a paper decorative layer versus a laminate with a natural product such as leather. (e.g., see Scher: Col. 2, lines 47-52)

Consequently, it is clear that: 1) Scher and Hastings disclose completely different products (e.g., a laminate vs. a substrate to be printed on); 2) Scher does not disclose the use of leather within a laminate; 3) the teachings and objectives of Scher directly contradict any suggestion that natural leather may be used as an alternative to a decorative print sheet disposed within a laminate; and 4) the presently claimed laminate is not a predictable variation of either Scher or Hastings alone, or in combination.

In light of the foregoing, it is respectfully submitted that the rejection of claims 1, 2, and 4-6 is not valid and it is respectfully requested that the aforesaid rejection be reversed and claims 1, 2, and 4-6 be allowed.

d) Claims 3, 7 and 22-32 are rejected under 35 U.S.C. §103(a) as being unpatentable over McQuade or Scher in view of Hastings and further in view of Lindenfeiser or Albrinck.

Claim 3, which depends from claim 1, stands alone. Claims 7 and 22-32 stand or fall together.

Appellants respectfully direct the Board to the remarks above regarding McQuade, Scher, Hastings, and combinations thereof. For at least the reasons provided above, appellants respectfully submit that claims 3, 7, and 22-32 are not unpatentable under 35 U.S.C. §103(a).

The rejection indicates that neither McQuade nor Scher discloses the amount of melamine-formaldehyde resin in the core sheet, and relies upon Lindenfeiser and Albrinck as disclosing melamine-formaldehyde resin within the range recited within claim 7. Independent claims 7 and 26 each recite a core layer containing a cellulosic sheet impregnated with a *phenol-formaldehyde* resin, not a *melamine-formaldehyde* resin.

Neither Lindenfeiser nor Albrinck discloses a laminate with a decorative layer consisting essentially of leather. Consequently, the combinations of McQuade or Scher in view of Hastings, and further in view of Lindenfeiser or Albrinck do not disclose the laminate recited within claims 3, 7, and 22-32, nor is the aforesaid laminate a predictable variation in view thereof.

In light of the foregoing, it is respectfully submitted that the rejection of claims 3, 7, and 22-32 is not valid and it is respectfully requested that the aforesaid rejection be withdrawn and the claims 3, 7, and 22-32 be allowed.

e) Claims 34-38 are rejected under 35 U.S.C. §103(a) as being unpatentable over McQuade or Scher in view Hastings, and further in view of Hiers.

Claims 34-38 stand or fall together.

The final rejection does not include any indication of how the references are applied to arrive at claims 34-38. Appellants respectfully direct the Board to the remarks above regarding McQuade, Scher, Hastings, and combinations thereof. For at least the reasons provided above, s respectfully submit that claims 34-38 are not unpatentable under 35 U.S.C. §103(a).

Hiers discloses a textile fabric with a leather-like appearance. According to Hiers, the motivation for such a product is that natural leather, which is a traditional material for footwear, waist belts, aprons, pouches, etc., presents “technical difficulties in manufacture, economic

difficulties in marketing, and durability problems in use.” (Col. 1, lines 6-23) Hiers discloses the solution to natural leather is an artificial leather. Hence, Hiers does not disclose a laminate having natural leather, and actually teaches away from the use of natural leather for some of the same reasons disclosed by McQuade and Scher.

In short, for the reasons identified above, none of McQuade, Scher, Hastings, Hiers, or any combination thereof, disclose or suggest a laminate as is recited in claims 34-38, nor is the laminate of claims 34-38 a predictable variation thereof. In fact, as explained above McQuade, Scher and Hiers actually teach away from the claimed laminate.

In light of the foregoing, it is respectfully submitted that the rejection of claims 34-38 is not valid and it is respectfully requested that the aforesaid rejection be reversed and the claims 34-38 be allowed.

f.) Claims 1, 2 and 4-6 are rejected as being obvious over McQuade, Scher, and Hastings, and further in view of Hiers.

Claims 1, 2, and 4-6 stand or fall together.

According to the rejection, neither McQuade nor Scher discloses “leather” to include “animal hide”. According further to the rejection, Hiers discloses the use of leather containing animal hides. Appellants respectfully disagree with the characterization of McQuade, Scher and Hiers and the rejection based thereon.

Appellants respectfully direct the Board to the remarks above regarding McQuade, Scher, Hastings, and combinations thereof. For at least the reasons provided above, s respectfully submit that claims 1, 2, and 4-6 are not unpatentable under 35 U.S.C. §103(a).

Hiers discloses a textile fabric with a leather-like appearance. According to Hiers, the motivation for such a product is that natural leather, which is a traditional material for footwear, waist belts, aprons, pouches, etc., presents “technical difficulties in manufacture, economic difficulties in marketing, and durability problems in use.” (Col. 1, lines 6-23) Hiers discloses the solution to natural leather is an artificial leather. Hence, Hiers does not disclose a laminate having natural leather, and actually teaches away from the use of natural leather for some of the same reasons disclosed by McQuade and Scher.

In short, for the reasons identified above, none of McQuade, Scher, Hastings, Hiers, or any combination thereof, disclose or suggest a laminate as is recited in claims 1, 2 and 4-6, nor is the laminate of claims 1, 2 and 4-6 a predictable variation thereof. In fact, as explained above McQuade, Scher and Hiers actually teach away from the claimed laminate.

In light of the foregoing, it is respectfully submitted that the rejection of claims 1, 2, and 4-6 is not valid and it is respectfully requested that the aforesaid rejection be reversed and claims 1, 2, and 4-6 be allowed.

g) Claims 1-7, 22-32, and 34-38 are rejected under 35 U.S.C. §103(a) as being unpatentable over Palmer in view Hastings.

Claims 1-6 and 34-38 stand or fall together. Claims 7 and 22-32 stand or fall together.

The rejection provides that Palmer discloses a laminate comprising a core layer, a decorative pattern layer, an overlay layer, and a release layer. The rejection indicates that Palmer does not disclose a decorative layer essentially of leather, but that Hastings provides a decorative laminate comprising a sheet of leather, and that it would be obvious to one of ordinary skill in the art to have used leather in the decorative sheet of Palmer because leather and cellulose paper have been used as alternatives in the prior art. Appellants respectfully disagree with the characterization of Palmer and Hastings and the rejection based thereon.

Hastings, as is detailed above, discloses a pliable material with a design of adhesive printed thereon, and does not disclose a decorative laminate – including a heat and pressure consolidated laminate.

Palmer discloses a method for controlling the gloss of conventional laminate (“[t]he decorative laminate 18 may be any of the many resin based decorative laminates known to those of ordinary skill in the art.” (col. 4, lines 8-10)). The laminate includes a core layer, a decorative sheet, and optionally an overlay disposed in stacked arrangement. (Col. 1, lines 37-42) The decorative sheet is typically manufactured from alpha cellulose paper impregnated with a melamine formaldehyde resin. The cellulose decorative sheet may be printed to appear like leather, and may be textured to give a three-dimensional appearance like leather. (Col.2, lines 2-36) There is no disclosure or suggestion within Palmer, however, of using a decorative sheet

consisting essentially of leather. On the contrary, the method disclosed by Palmer is specifically directed toward controlling the gloss of the resin impregnated overlay and/or decorative layers of a conventional laminate, which decorative layer is not present in the claimed laminate.

The problem to be solved, according to Palmer, is to ensure that the desired gloss and texture are imparted to the decorative laminate: “a need exists for a method and an apparatus for producing decorative laminates exhibiting excellent gloss characteristics.”

Regarding claim 7, a heat and pressure consolidated laminate is recited that comprises, inter alia, a core layer containing at least one cellulosic sheet impregnated with a thermosetting phenol-formaldehyde resin, said cellulosic sheet having a resin content ranging from about 25 percent to about 35 percent. The rejection provides Hastings discloses an adhesive layer that comprises phenol-formaldehyde resin. Hastings discloses that the adhesive may include a mixture of substantially equal parts of butadiene acrylonitrile and phenol formaldehyde resin. There is no disclosure within Hastings of a cellulosic sheet having a phenol formaldehyde resin content ranging from about 25 percent to about 35 percent.

Consequently, it is clear that: 1) Palmer and Hastings disclose completely different products (e.g., a laminate vs. a substrate to be printed on); 2) the teachings of Palmer are directed toward controlling the amount of gloss on a resin impregnated decorative sheet, which is not an issue with the claimed laminate that has a decorative layer consisting essentially of leather; 3) there is no disclosure within Hastings of a cellulosic sheet having a phenol formaldehyde resin content ranging from about 25 percent to about 35 percent; and 4) the presently claimed laminate is not a predictable variation of either Palmer or Hastings alone, or in combination.


In light of the foregoing, it is respectfully submitted that the rejection of claims 1-7, 22-32, and 34-38 is not valid and it is respectfully requested that the aforesaid rejection be reversed and claims 1-7, 22-32, and 34-38 be allowed.

11. CONCLUSION:

In view of the above, Appellants respectfully requests that the Board of Patent Appeals and Interferences reverse the rejections in the present case and pass all of pending claims 1-7, 22-32 and 34-38 onto issuance.

Please charge our deposit account no. 50-3381 in the amount of \$630.00 for the Appeal Brief fee one month extension fee. If there are any additional fees due in connection with the filing of this amended appeal brief, please charge them to our Deposit Account 50-3381. If a fee required for any extension of time under 37 C.F.R. §1.136 not accounted for above, such an extension is requested and the fee should be charged to the above Deposit Account.

Respectfully submitted,



Richard D. Getz
Reg. No. 36,147
O'Shea Getz P.C.
1500 Main Street, Suite 912
Springfield, MA 01115
(413) 731-3100, Ext. 103

APPENDIX:

a.) CLAIMS SECTION:

1. (Previously Presented) A heat and pressure consolidated laminate, comprising in superimposed relationship:

a core layer containing at least one cellulosic sheet impregnated with a thermosetting resin; and

a first decorative layer consisting essentially of leather.

2. (Original) The laminate of claim 1 wherein said thermosetting resin is a phenol-formaldehyde resin.

3. (Previously presented) The laminate of claim 1, wherein said first decorative layer is bonded leather having a sheet thickness ranging from about 0.2 mm to about 4.0 mm.

4. (Original) The laminate of claim 1, further comprising an overlay layer disposed on a side of said decorative layer opposite said core layer.

5. (Previously presented) The laminate of claim 1, further comprising a second decorative layer, disposed on the side of the core layer opposite the first decorative layer, said second decorative layer consisting essentially of leather.

6. (Original) The laminate of claim 1, further comprising a backer layer of at least one cellulosic sheet impregnated with a thermosetting resin, said backer layer being disposed on the side of the core layer opposite the decorative layer.

7. (Previously presented) A heat and pressure consolidated laminate, comprising in superimposed relationship:

a core layer containing at least one cellulosic sheet impregnated with a thermosetting phenol-formaldehyde resin, said cellulosic sheet having a resin content ranging from about 25 percent to about 35 percent;

a first decorative layer consisting essentially of a bonded leather having a sheet thickness ranging from about 0.2 mm to about 4.0 mm; and

an overlay layer disposed on a side of said first decorative layer opposite the core layer, said overlay layer being at least one sheet of alpha cellulose paper impregnated with a melamine formaldehyde resin.

22. (Previously Presented) The laminate of claim 7, further comprising a second decorative layer disposed on the side of the core layer opposite the first decorative layer.

23. (Previously Presented) The laminate of claim 22, where the second decorative layer consists essentially of a leather material.

24. (Previously Presented) The laminate of claim 7, further comprising a backer layer disposed on the side of the core layer opposite the first decorative layer.

25. (Previously Presented) The laminate of claim 24, where the backer layer comprises at least one cellulosic sheet impregnated with a thermosetting resin.

26. (Previously Presented) A heat and pressure consolidated laminate, comprising in superimposed relationship:

a core layer containing at least one cellulosic sheet impregnated with a thermosetting phenol-formaldehyde resin, the cellulosic sheet having a resin content ranging from about 25 percent to about 35 percent; and

a first decorative layer consisting essentially of leather, the first decorative layer having a sheet thickness ranging from about 0.2 mm to about 4.0 mm.

27. (Previously Presented) The laminate of claim 26, further comprising an overlay layer disposed on a side of the first decorative layer opposite the core layer.

28. (Previously Presented) The laminate of claim 27, where the overlay layer comprises at least one sheet of alpha cellulose paper impregnated with a melamine formaldehyde resin.

29. (Previously Presented) The laminate of claim 26, further comprising a second decorative layer disposed on the side of the core layer opposite the first decorative layer.

30. (Previously Presented) The laminate of claim 29, where the second decorative layer consists essentially of leather.

31. (Previously Presented) The laminate of claim 26, further comprising a backer layer disposed on the side of the core layer opposite the first decorative layer.

32. (Previously Presented) The laminate of claim 31, where the backer layer comprises at least one cellulosic sheet impregnated with a thermosetting resin.

34. (Previously Presented) A heat and pressure consolidated laminate, comprising in superimposed relationship:

a core layer containing at least one cellulosic sheet impregnated with a thermosetting resin; and

a first decorative layer consisting essentially of a leather animal hide.

35. (Previously presented) The laminate of claim 34, further comprising a second decorative layer, disposed on the side of the core layer opposite the first decorative layer, said second decorative layer consisting essentially of a leather animal hide.

36. (Previously Presented) The laminate of claim 34, further comprising a backer layer of at least one cellulosic sheet impregnated with a thermosetting resin, said backer layer being disposed on the side of the core layer opposite the decorative layer.

37. (Previously presented) A heat and pressure consolidated laminate, comprising in superimposed relationship:

a core layer containing at least one cellulosic sheet impregnated with a thermosetting phenol-formaldehyde resin;

a first decorative layer consisting essentially of a bonded leather animal hide; and

an overlay layer disposed on a side of said first decorative layer opposite the core layer.

38. (Previously Presented) The laminate of claim 37, further comprising a second decorative layer disposed on the side of the core layer opposite the first decorative layer, and wherein the second decorative layer consists essentially of a leather animal hide.

b.) CLAIM SUPPORT AND DRAWING ANALYSIS SECTION: Support for the claims is provided within the “{ }”. These citations are exemplary of the support and should not be construed as being limited to such citations.

1. A heat and pressure consolidated laminate, comprising in superimposed relationship:
a core layer containing at least one cellulosic sheet impregnated with a thermosetting resin; and {see paragraphs [0003, 0015]; core layer 12 is shown in FIGS. 1-3}

a first decorative layer consisting essentially of leather. {see paragraphs [0003, 0017]; decorative layer 14 is shown in FIGS. 1-3}

2. The laminate of claim 1 wherein said thermosetting resin is a phenol-formaldehyde resin. {see paragraph [0015]}

3. The laminate of claim 1, wherein said first decorative layer is bonded leather having a sheet thickness ranging from about 0.2 mm to about 4.0 mm. {see paragraph [0017]}

4. The laminate of claim 1, further comprising an overlay layer disposed on a side of said decorative layer opposite said core layer. {see paragraph [0018]; overlay 16 is shown in FIG. 2}

5. The laminate of claim 1, further comprising a second decorative layer, disposed on the side of the core layer opposite the first decorative layer, said second decorative layer consisting essentially of leather. {see paragraphs [0020, 0017]; second decorative layer 18 is shown in FIG. 3}

6. The laminate of claim 1, further comprising a backer layer of at least one cellulosic sheet impregnated with a thermosetting resin, said backer layer being disposed on the side of the core layer opposite the decorative layer. {see paragraph [0019]; backer layer 20 is shown in FIG. 2}

7. A heat and pressure consolidated laminate, comprising in superimposed relationship:
a core layer containing at least one cellulosic sheet impregnated with a thermosetting phenol-formaldehyde resin, said cellulosic sheet having a resin content ranging from about 25 percent to about 35 percent; {see paragraphs [0003, 0015]; core layer 12 is shown in FIGS. 1-3}
a first decorative layer consisting essentially of a bonded leather having a sheet thickness ranging from about 0.2 mm to about 4.0 mm; and {see paragraphs [0003, 0017]; decorative layer 14 is shown in FIGS. 1-3}
an overlay layer disposed on a side of said first decorative layer opposite the core layer, said overlay layer being at least one sheet of alpha cellulose paper impregnated with a melamine formaldehyde resin. {see paragraph [0018]; overlay 16 is shown in FIG. 2}

22. (Previously Presented) The laminate of claim 7, further comprising a second decorative layer disposed on the side of the core layer opposite the first decorative layer. {see paragraphs [0020, 0017]; second decorative layer 18 is shown in FIG. 3}

23. (Previously Presented) The laminate of claim 22, where the second decorative layer consists essentially of a leather material. {see paragraphs [0020, 0017]; second decorative layer 18 is shown in FIG. 3}

24. (Previously Presented) The laminate of claim 7, further comprising a backer layer disposed on the side of the core layer opposite the first decorative layer. {see paragraph [0019]; backer layer 20 is shown in FIG. 2}

25. (Previously Presented) The laminate of claim 24, where the backer layer comprises at least one cellulosic sheet impregnated with a thermosetting resin. {see paragraph [0019]; backer layer 20 is shown in FIG. 2}

26. (Previously Presented) A heat and pressure consolidated laminate, comprising in superimposed relationship:

a core layer containing at least one cellulosic sheet impregnated with a thermosetting phenol-formaldehyde resin, the cellulosic sheet having a resin content ranging from about 25 percent to about 35 percent; and {see paragraphs [0003, 0015]; core layer 12 is shown in FIGS. 1-3}

a first decorative layer consisting essentially of leather, the first decorative layer having a sheet thickness ranging from about 0.2 mm to about 4.0 mm. {see paragraphs [0003, 0017]; decorative layer 14 is shown in FIGS. 1-3}

27. (Previously Presented) The laminate of claim 26, further comprising an overlay layer disposed on a side of the first decorative layer opposite the core layer. {see paragraph [0018]; overlay 16 is shown in FIG. 2}

28. (Previously Presented) The laminate of claim 27, where the overlay layer comprises at least one sheet of alpha cellulose paper impregnated with a melamine formaldehyde resin. {see paragraph [0018]; overlay 16 is shown in FIG. 2}

29. (Previously Presented) The laminate of claim 26, further comprising a second decorative layer disposed on the side of the core layer opposite the first decorative layer. {see paragraphs [0020, 0017]; second decorative layer 18 is shown in FIG. 3}

30. (Previously Presented) The laminate of claim 29, where the second decorative layer consists essentially of leather. {see paragraphs [0020, 0017]; second decorative layer 18 is shown in FIG. 3}

31. (Previously Presented) The laminate of claim 26, further comprising a backer layer disposed on the side of the core layer opposite the first decorative layer. {see paragraph [0019]; backer layer 20 is shown in FIG. 2}

32. (Previously Presented) The laminate of claim 31, where the backer layer comprises at least one cellulosic sheet impregnated with a thermosetting resin. {see paragraph [0019]; backer layer 20 is shown in FIG. 2}

34. (Previously Presented) A heat and pressure consolidated laminate, comprising in superimposed relationship:

a core layer containing at least one cellulosic sheet impregnated with a thermosetting resin; and {see paragraphs [0003, 0015]; core layer 12 is shown in FIGS. 1-3}

a first decorative layer consisting essentially of a leather animal hide. {see paragraphs [0003, 0017]; decorative layer 14 is shown in FIGS. 1-3}

35. (Previously presented) The laminate of claim 34, further comprising a second decorative layer, disposed on the side of the core layer opposite the first decorative layer, said second decorative layer consisting essentially of a leather animal hide. {see paragraphs [0020, 0017]; second decorative layer 18 is shown in FIG. 3}

36. (Previously Presented) The laminate of claim 34, further comprising a backer layer of at least one cellulosic sheet impregnated with a thermosetting resin, said backer layer being

disposed on the side of the core layer opposite the decorative layer. {see paragraph [0019];
backer layer 20 is shown in FIG. 2}

37. (Previously presented) A heat and pressure consolidated laminate, comprising in
superimposed relationship:

a core layer containing at least one cellulosic sheet impregnated with a thermosetting
phenol-formaldehyde resin; {see paragraphs [0003, 0015]; core layer 12 is shown in FIGS. 1-3}

a first decorative layer consisting essentially of a bonded leather animal hide; {see
paragraphs [0003, 0017]; decorative layer 14 is shown in FIGS. 1-3} and

an overlay layer disposed on a side of said first decorative layer opposite the core layer.
{see paragraph [0018]; overlay 16 is shown in FIG. 2}

38. (Previously Presented) The laminate of claim 37, further comprising a second decorative
layer disposed on the side of the core layer opposite the first decorative layer, and wherein the
second decorative layer consists essentially of a leather animal hide. {see paragraphs [0020,
0017]; second decorative layer 18 is shown in FIG. 3}

c.) MEANS OR STEP PLUS FUNCTION ANALYSIS SECTION: There are no claims
pending that include means or step plus function language.

d.) EVIDENCE SECTION: No Evidence is provided herewith.

e.) RELATED PROCEEDINGS SECTION: There are no related proceedings.